

The Honorable Edward F. Shea

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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON
 AT SPOKANE

SARAH BRADBURN, PEARL)	
CHERRINGTON, CHARLES)	
HEINLEN, and THE SECOND)	NO. CV-06-327-EFS
AMENDMENT FOUNDATION,)	
)	DEFENDANT NCRL'S RESPONSE
Plaintiffs,)	TO PLAINTIFFS' MOTIONS IN
)	LIMINE
v.)	
)	
NORTH CENTRAL REGIONAL)	
LIBRARY DISTRICT,)	
)	
Defendant.)	
)	

Defendant North Central Regional Library ("NCRL") hereby responds to
 Plaintiffs Objections to Defendants' Motions in Limine.

DEFENDANT NCRL'S RESPONSE TO
 PLAINTIFFS' MOTIONS IN LIMINE - 1
 CV-06-327-EFS
 #665540 v1 / 42703-001

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1 **A. The Court should permit testimony of NCRL branch librarians and**
2 **board members whose testimony became relevant and necessary**
3 **following recent motion practice.**

4 1. The Branch Librarians

5 In its Witness and Exhibit List, NCRL identified the following witnesses,
6 among others: Connie Kuhlman, Katy Sessions, and Sharon Reddick. Ms.
7 Kuhlman is the Grant County Regional Manager and head of Moses Lake
8 Branch. Ms. Sessions is the Chelan/Douglas County Regional Manager & Head
9 of Wenatchee Branch. Ms. Reddick is the Okanogan/Ferry County Regional
10 Manager & Head of Omak Branch. Each is expected to testify regarding her
11 personal experience with NCRL's internet filter, including instances where
12 individuals have circumvented the filter to obtain sexually explicit material.
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16 In its initial disclosure in February 2007, NCRL identified the branch
17 librarians generally and stated that it was "not known" whether they would have
18 information necessary for the defense of the case. This was an accurate
19 statement at the time, given the general and broad allegations in Plaintiffs'
20 complaint which simply stated that NCRL's policy of refusing to disable its
21 Internet filter at the request of an adult patron violated the United States and
22 Washington State Constitutions. Accordingly, in its initial disclosure, NCRL
23 focused on identifying those individuals who developed and implemented the
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1 subject Internet Use policy, including Dean Marney, Dan Howard and Barbara
2 Walters.

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4 The first time that NCRL realized the testimony of the branch librarians
5 was relevant came after reviewing Plaintiff's opposition to NCRL's motion for
6 summary judgment. In response to NCRL's assertion that one of the
7 justifications for its policy of filtered access was to protect its staff from
8 exposure to inappropriate content, Plaintiffs' argued that (1) NCRL's discussion
9 of staff concerns was unpersuasive; (2) there was no evidence that the
10 confrontations between patrons and staff had caused staff unreasonable
11 discomfort or consisted of anything more than "a polite exchange or words"; and
12 (3) there is no evidence that unfiltered access would have an adverse impact on
13 staff. (Ct. Rec. 53, pp. 14-15).

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15 NCRL did not include declarations from staff members in support of its
16 motion because NCRL does not believe it is necessary to prove the
17 consequences of unfiltered internet access to justify its concern for protecting
18 staff from possible consequences. Although NCRL believes Dan Howard, the
19 manager who supervises branch librarians can testify about staff experiences,
20 Plaintiffs contend otherwise. Thus, the branch librarians should be allowed to
21 testify to rebut Plaintiffs' position. Plaintiffs' may not have it both ways. If this

1 case is tried, NCRL should be permitted to introduce witnesses beyond Dean
2 Marney or Dan Howard, to refute Plaintiffs' argument that unfiltered access
3 does not adversely impact staff.
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5 Moreover, it has only recently become clear that Plaintiffs intend to
6 support their argument on this point with the testimony June-Pinnell Stevens,
7 Kenton Oliver, library professionals who claim that their districts have had
8 relatively few problems with unfiltered adult Internet access. (Ct. Rec. 41, pg.
9 21-23). As set forth in NCRL's Motion in Limine to exclude these witnesses,
10 Ms. Pinnell-Stevens and Mr. Oliver are personally opposed to Internet filtering,
11 have no personal knowledge of what will or will not work at NCRL branch
12 libraries, and are offered solely to advance the official positions of the American
13 Library Association and the American Civil Liberties Union. (Ct. Rec. 76, pp. 1-
14 6). The only individuals beyond Mr. Marney and Mr. Howard who are
15 competent to testify regarding the impact of NCRL's Internet Policy on NCRL
16 staff, is the staff itself. Thus, if Mr. Oliver and Ms. Pinnell-Stevens testify, the
17 testimony of NCRL's branch librarians must be allowed to rebut the testimony.
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24 For all of the aforementioned reasons, NCRL's disclosure of Ms.
25 Kuhlman, Ms. Sessions, and Ms. Reddick is substantially justified and all three
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1 should be permitted to testify. Should Plaintiffs wish to depose them before
2 trial, NCRL will make them available.
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4 2. NCRL Trustee Deborah Moore

5 NCRL has identified Deborah Moore as a trial witness. Ms. Moore is an
6 NCRL Trustee from Grant County. NCRL acknowledged the Board generally
7 in its initial disclosures, but Ms. Moore was not specifically named. In light of
8 the vague allegations in Plaintiffs' complaint, it was not clear at that time
9 whether the individual Board members would have information necessary for
10 the defense of the case.
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13 The relevancy of Ms. Moore's testimony became apparent when NCRL
14 received Plaintiffs' motion for summary judgment. In their supporting papers,
15 Plaintiffs' painted Mr. Marney as a censor, wielding unfettered discretion with
16 respect to NCRL's Internet Usage Policy. (Ct. Rec. 41, p. 8-10; Ct. Rec. 55, p.
17 11-13; Ct. Rec 58, p. 6;). Ms. Moore's testimony would refute such arguments
18 and clarify that serves as a liaison between the Board and library staff, and that
19 Mr. Marney answers to the Board and implements the policies that the Board
20 adopts. (Ct. Rec. 29, p. 2-3).
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1 For these reasons, NCRL's disclosure of Ms. Moore is substantially
2 justified. NCRL will make Ms. Moore available for deposition should Plaintiffs
3 wish to take it.
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5 **B. Mr. Howard and Mr. Marney may testify regarding the justifications**
6 **for NCRL's policy of filtering Internet access, to include their**
7 **personal knowledge of staff concerns with unfiltered access.**

8 In its Witness and Exhibit List, NCRL described the expected testimony
9 Dan Howard as follows:
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11 Dan Howard is the Public Services Director for
12 NCRL. Mr. Howard administers NCRL's 28 branch
13 libraries and its mail order library. He also coordinates
14 collection development activities and administer
15 grants. With respect to the individual branches, Mr.
16 Howard's responsibilities include, among other things,
management of personnel. This includes supervision
of all NCRL branch librarians.

17 Mr. Howard will testify regarding NCRL's policies, to
18 include: its mission statement, collection development
19 policy and internet usage policy. He will discuss the
20 relationship between the filter and collection
21 development. He will testify regarding his district's
22 need to comply with the Children's Internet Protection
23 Act ("CIPA"). Mr. Howard will also discuss NCRL's
24 current internet filtering profile and the procedure for
25 requesting that certain internet content be unblocked.
26 Mr. Howard will discuss the unblocking requests that
27 NCRL has received from patrons and the process that
28 he and Mr. Marney use in evaluating the requests.

1 Mr. Howard will also discuss his experience with
2 certain privacy measures suggested by Plaintiffs,
3 including: (1) privacy screens; (2) recessed desks and
4 (3) a “tap and tell” policy. Mr. Howard discuss his
5 concerns with unfiltered access and the impact on
6 branch staff.

7 As discussed previously, Mr. Howard supervises all NCRL branch
8 librarians and addresses their concerns as part of his job responsibilities. These
9 concerns include issues librarians have had with the inappropriate use of public
10 use computers by adult patrons. In support of its motion for summary judgment,
11 NCRL offered the declaration of Mr. Howard, which contained discussions of
12 some of these generalized staff concerns. (Ct. Rec. 29. pp. 23-27). These
13 discussions are not offered to prove the truth of the matter asserted, (i.e. Ms.
14 Lucile Ames, NCRL’s Okanogan branch librarian actually reported seeing
15 inappropriate pornographic materials on public use computers). Rather, the
16 discussions are offered as evidence of Mr. Howard’s personal knowledge of
17 staff anxiety and concerns.
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22 Contrary to Plaintiffs’ argument, NCRL does not seek to introduce the
23 discussions as “evidence that patrons often view pornography on its library
24 terminals, and that this occurs with such frequency or severity as to justify
25 measures alleged to violate the First Amendment.” (Ct. Rec 78, p. 78). First,
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1 there is no constitutional requirement that NCRL show that the incidents are
2 frequent or severe to permit filtering. Second, Plaintiffs' categorization of the
3 discussions in Mr. Howard's declaration as "anecdote and supposition" is self-
4 serving and inaccurate. The discussions proffered by Mr. Howard's declaration
5 are admissible both in support of NCRL's motion for summary judgment and at
6 trial.
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9 Similarly, Mr. Howard and Mr. Marney may testify regarding their
10 personal concerns with unfiltered access and their perceived impact of unfiltered
11 access on branch staff. As administrators of the library, Mr. Howard and Mr.
12 Marney are free to discuss their justifications for their policy, to include the need
13 to protect staff from the inadvertent viewing of illicit or illegal sexual material.
14 This may include their personal knowledge of staff concerns with unfiltered
15 access. Plaintiffs may make hearsay objections during the course of trial.
16 However, an order granting Plaintiffs motion relating to hypothetical hearsay
17 statements, beyond those contained in Mr. Howard's declaration, would be
18 premature.
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1 **C. Mr. Marney may testify regarding the justifications for NCRL's**
2 **policy of filtering Internet access, to include his personal knowledge**
3 **of widespread concerns with patrons using public library Internet**
4 **terminals to view pornography.**

5 NCRL seeks to introduce several newspaper articles discussing the
6 availability of pornography at public libraries across the county. Contrary to
7 Plaintiffs' claims, these articles are not offered to prove the truth of the matter
8 asserted (i.e. on January 22, 2008, a Dallas, Texas reporter observed numerous
9 instances in which library patrons obtained pornography at public use computer
10 terminals.) Rather, NCRL seeks to introduce the articles as perspectives on
11 issues associated with internet use in public libraries and their effect on NCRL's
12 policy choices.
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16 Mr. Marney has collected hundreds of newspaper articles discussing a
17 number of topics relating to Internet filtering, only a fraction of which have been
18 identified as trial exhibits. Mr. Marney's personal knowledge of public
19 discourse on the issue of pornography in public libraries is based, in small part,
20 on the particular articles that NCRL seeks to introduce. The articles support for
21 Mr. Marney's belief that absent filtering, more people would use library
22 computers to obtain pornography and other illicit sexual material.
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1 DATED this 14th day of April, 2008

2 KARR TUTTLE CAMPBELL

3
4 By: /s/ Celeste Mountain Monroe

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3 **CERTIFICATE OF SERVICE**

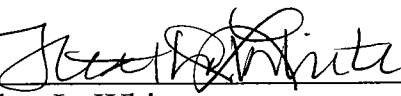
4 I hereby certify that on April 14, 2008, I electronically filed the foregoing
5 with the Clerk of the Court using the CM/ECF system which will send
6 notification of such filing to the persons listed below:
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